IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 577 OF 2007

Ccommercial Co-operative Bank Ltd,.
and others .... Petitioner

versus

Nrijlal Sajandas Hirani & ors..... Respondent.

Shri s.S.Patwardhan for the petitioner
Shri A.S.Desai fr Respondents.

CORAM; A.P. DESHPANDE, J.
DATED; 6TH JULY, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The present petitioner is a Co-operative bank whereas the respondent no.1 is a borrower and respondent nos.2 and 3 are the guarantors. Respondent no.1 filed a dispute under section 91 of the Maharashtra Co-operative Societies Act in the Co-operative Court at Kolhapur in November 2005. Two fold prayers were made in the dispute. (1) for taking proper accounts by applying interest at the rate of 8% per annum. (2) That the immovable property, which is the property mortgaged in favour of the petitioner, be sold for a sum of Rs. 1,01,40,000/-. In the said

dispute an application came to be moved by respondent no.1 claiming injunction restraining the petitioner bank from recovering arrears of loan amount except in accordance with the procedure established by law. An ex-parte ad-interim order was passed by the Co-operative court subject to payment of Rs.2.5 lakhs within a period of 30 days. According to the petitioner, even this amount was not deposited by the respondent. The petitioner appeared before the Co-operative court and resisted the claim made in the dispute so also the interim application. Pending the dispute before the Co-operative court, the petitioner bank served a notice under section 13(2) of the Securitisation and Re-construction of Financial Assets and Enforcement of Security Act, 2002 (hereinafter referred to as the Securitisation Act) on the respondent, with a view to recover the amount by following due process of law. The respondent had objected to the notice under 13(2) of the Securitisation Act. The petitioner rejected the objection and proceeded to issue notice under section 13(4) of the Securitisation Act and called upon the respondent to pay the dues within the stipulated period. On receipt of the notice,under section 13(4) of the Securitisation Act, the respondent no.1 filed yet another application for temporary injunction seeking to restrain the petitioner from interfereing

with the possession of the property which are the secured assets.

3. It has been the case of the petitioner that the Co-operative court lacks jurisdiction to pass the order of injunction thereby restraining the petitioner bank from having recourse to the mode of recovery permissible under the Securitisation Act. The trial court being of the view that as limitation prescribed for filing of an appeal before the DRT is 45 days, it protected the possession of the property of the respondent no.1 by granting a temporary injunction for a period of 45 days. Respondent no.1 apprehending an action by the bank as is contemplated by section 13(4) of the Securitisation Act filed an appeal before the Co-operative appellate court and prayed for an injunction with a view to restrain the petitioner from proceeding further under the provisions of Securitisation Act. The Cooperative appellate court without notice to the present petitioner passed an ex-parte order and directed the parties to maintain statuesquo till the disposal of the appeal or till passing of further orders. By granting injunction, the petitioner bank has been directed to maintain statusquo in regard to the attached property. It is this order which is challenged by filing the present writ petition.

4. Placing reliance on various provisions of the Securitisation Act as interpreted by the Apex Court in Mardia Chemicals judgment, it is contended by the learned counsel that the Securitisation Act itself has been enacted to provide a speedy remedy for recovery of the bank's dues. Placing reliance on the said judgment it is submitted that the Co-operative court has no jurisdiction to pass an order of Injunction restraining the petitioner bank from proceeding under the Securitisation Act. Having regard to the law laid down by the Supreme court in **Mardia Chemicals Ltd. Vs. Union of India reported in AIR 2004 S.C. 2371,** a clear position emerges that the co-operative court in the dispute filed by the respondent, would not have jurisdiction to pass an order of injunction seeking to restrain the petitioner bank from proceeding against the secured assets under the Act. As I am of the clear view that the impugned order passed by the Maharashtra State Co-operative Appellate Court, Bombay dated 30-11-2006 is wholly without jurisdiction, the same deserves to be quashed and set aside. It will not be out of place to state at this juncture that the remedy for a debtor who is proceeded against under section 13(4) of the Securitisation Act is to file an appeal before DRT after the action is taken under section 13(4) of the Act. A contemplated action under

section 13(4) of the Act cannot be stalled by the Co-operative Court in a dispute filed at the behest of the debtor.

5. It will not be out of place to state that the Central Government in exercise of powers conferred under item V of clause (c) of sub section (1) of section 2 of the Securitisation Act has specified Co-operative bank to be a "bank" for the purpose of securitisation act. The notification is dated 20-1-2003 and thus it is not disputed that the petitioner is a bank within the meaning of the ‘bank’ under the Securitisation act.

6. In this view of the matter, allowing the writ petition, I quash and set aside the impugned order dated 30-11-2006 passed by the Maharashtra State Co-operative Appellate Court in A.O.No. 268/06. Rule made absolute in the above terms.

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